IN THE HIGH COURT OF JUDICATURE
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MR JUSTICE J.CHELAMESWAR
and
THE HON'BLE MR JUSTICE P.SWAROOP REDDY

WRIT APPEAL NO :1736 of 2005

Dated:26th April 2007.

Between:

A. Shareef, S/o Late Abdulla Shareef, aged about 71 years, occ: Lecturer in History or Art, Jawaharlal Nehru Technological University, College ofFine Arts, Mahaveer Marg, Hyderabad, resident of Hanuman Tekdi, Hyderabad.

..... APPELLANT

AND

Jawaharlal Nehru Technological University rep. By its Registrar, Mahaveer Marg, Hyderabad and another.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE J.CHELAMESWAR
AND
THE HON'BLE SRI JUSTICE P.SWAROOP REDDY

W.A.NO.1736 OF 2005

ORAL ORDER:
(per the Hon'ble Sri Justice J.Chelameswar)

Not satisfied with the disposal of the writ petition with certain observations, the petitioner in Writ Petition No.713 of 1998, which was decided on 17-06-2005, by a learned Judge of this Court, filed the present writ appeal.

The writ petition was filed with a prayer seeking a mandamus directing the respondents to regularize the services of the petitioner in the cadre of lecturer in the 1st respondent University with all consequential benefits including the sanction of pension. The learned Judge disposed of the writ petition with the following observations:

> "….. At this length of time, it is not necessary to go into all those aspects and it is suffice to direct the petitioner to make representation to the competent authority ventilating his grievances for the purpose of regularizing his services at least for grant of some pensionary and other retirement benefits. If any such application is made by the petitioner, the competent authority shall entertain and dispose of the same on merits within a period of three months from

> the date of receipt of a copy of this order.
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> With the above direction, the writ petition is disposed of. No order as to costs."

The 1st respondent University is brought into existence in the year 1972 by an Act of the Legislature of the State of Andhra Pradesh, known as Jawaharlal Nehru Technological University Act – Act 16 of 1972. By the declaration under Section 1(4) of the said Act, an existing college i.e., the Government College of Fine Arts and Architecture, Hyderabad, is brought within the purview of the operation of the abovementioned Act, along with various other existing institutions.

Under Section 2(b) of the Act, the expression 'college' or 'constituent college'; to mean;

> "any College established or maintained by the University for providing courses of study qualifying students for admission to the University examinations in accordance with the regularizations prescribed and includes a college established or maintained by any other University in the State immediately before the commencement of this Act and transferred to this University subsequently;"

The College of Fine Arts and Architecture, is now a constituent college of the Jawaharlal Nehru Technological University. The history of this college was

judicially taken note of by this Court in an earlier judgment in Writ Petition No.3688 of 1977, dated 19-08-1978, wherein the learned Judge, who decided the case, observed as follows:

> " .... The constituent College was started in the year 1940 as the Central School of Art and Craft, run by the former Nizam's Government. In 1953 it was redesignated as "School of Arts". The College was conducting a 5 year Diploma Course in Applied Arts right from the beginning. A diploma-course was started in Architecture in the year 1951."

The appellant-writ petitioner asserted in his affidavit that he has been working in the said college from 1974 onwards, teaching History of Art. The appellant asserted in the affidavit that he is an expert in the subject of History of Art with a further assertion that he is having an established reputation at academic and professional levels nationally and internationally. He further asserted at Paragraph No.3 of the affidavit as follows:

> " The petitioner is the only teacher who is teaching this specialized subject since 1974 onwards and no other teacher including from the regular staff are available to teach this specialized subject of History of Art thus the petitioner is continuously engaged under temporary service to teach this subject of History of Art for all the 3 disciplines of painting, applied art and sculpture being offered under

Bachelor of Fine Art courses at JNTU college of Arts."

The allegation of the appellant that he has been working from 1974 with the respondents is not defined/disputed in the counter affidavit filed by the respondents, on the other hand at Paragraph No.4 of the counter affidavit, it is stated as follows:

" I state that the petitioner at present, is 69 years old. The petitioner also admits in his affidavit that he has been working since 1974 on temporary basis."

The burden of the sound in the counter is that the appellant does not possess the requisite academic qualification to be appointed as a lecturer and he was working only as an academic assistant. The respondents, however, chose to deny the allegation that he was working as a lecturer in the History of Art though they are silent as to what was the nature of activity the appellant was undertaking as an academic assistant.

From the pleadings stated above, the fact that the services of the appellant were engaged by the respondents from 1974 onwards, remains undisputed. Apart from that the appellant placed two documents on record; one being a letter of the Principal of the J.N.T.U. College of Fine Arts, dated 19-11-1990. The relevant portion of which reads as follows:

" This is to certify that Mr.

> A.Shareef is a teaching faculty in JNTU College of Fine Arts, Hyderabad and is working since 1974 in the college. At present he is teaching the subjects such as History of Western Art, History of Indian and Far Eastern Art and Western and Indian Aesthetics for Degree courses in the Department of Painting and Sculpture."

The authenticity of the content of the said letter is not disputed by the respondents. The content, extracted above, clearly establishes two facts that he has been teaching from 1974 onwards in the college and that he was teaching the subject specified therein for the students of degree courses for the departments of Painting and Sculpture, run by the college. Similarly, another document, viz., notification issued by the Osmania University on 03-06-1992, convening a meeting of Adhoc Committee for 5 year degree course for Fine Arts on a certain date. The notification indicates that the appellant is one of the members of the said Adhoc Committee and he is described as a "Practicing Applied Arts of repute, Faculty member of J.N.T.U. & Part-time lecturer". From the above, it can be clearly inferred that the assertion of the appellant that he has an established reputation both at the academic and professional levels is true.

It is in this background of the abovementioned facts, the claim of the appellant is required to be

examined.

The respondents raised various issues like, the availability of a sanctioned post and the lack of academic qualification on the part of the appellant to be appointed as a lecturer in the college. It is an admitted fact that the appellant was initially appointed on a part-time basis, where he was paid a fixed remuneration for every hour of teaching and later he was appointed on a consolidated pay per month, the details of which are not readily available on record and which may not be relevant also for the issue on hand. In view of the document dated 19-11-1990, the content of which was already extracted earlier, the fact that the appellant was teaching history of Western Art, etc., for students of degree courses in the departments of Painting and Sculpture, also remains un-rebutted. On the face of such settled facts, we wonder and note with disgust the audacity of the respondents in taking a stand in the affidavit dated –Nil- November, 2003 in the writ petition;

> " …, he was appointed as Academic Assistant on temporary basis as a matter of gratis as the post does not confer any right to the petitioner……"

If really, the appellant was so unqualified or his services were so dispensable, there was no necessity for the respondents to have continued him as a teacher for a period of three decades. It may be true that the appellant

does not have a formal academic qualification to be appointed as a lecturer in accordance with the rules and regulations governing the post as framed by the University. We hasten to add that we are not examining this issue, but we only proceed on the premise that the appellant does not have the requisite academic qualification. If the University allowed the appellant to teach thousands of students for over a period of three decades, it could not have acted consistently with the statutory mandate contained under Section 4(1)(i) of the Act;

> " to provide for the advancement of learning and knowledge in engineering, technology, physical and **social sciences, architecture and fine arts** by teaching, research, experimentation or practical training or by such other means as the University may deem fit;"

If the appellant was so utterly incompetent to teach the subject and if, really the respondents believed that the appellant was not qualified to teach, they should have dispensed with his services by following the appropriate procedure of the law.

History does not lack instances, where, men and women of high achievement/accomplishment are some times without a formal academic qualification. Perhaps, the appellant belongs to that class.

This conclusion of ours derives support from the

fact that after the disposal of the writ petition, though the respondents have no legal obligation to continue the services of the appellant in any way, coupled with the fact that the appellant is aged more than 70 years the respondents still engage his services, even as on the date of hearing of the appeal. There was a specific assertion in this regard that the appellant's services are still being utilized by the respondents and the learned counsel for the respondents, on verification, admitted the same at the time of the hearing.

In spite of what has happened observed above, the fact remains that the writ petitioner had crossed the normal age of superannuation fixed by the University for a teacher. Therefore, at this length of time, the issue relating to regularisation of his services should not be taken up for consideration at all. The issue relating to regularisation should not detain us from considering the eligibility of the writ petitioner to seek payment of pension for the services rendered by him continuously to the respondent University. Therefore, we take up for consideration the issue relating to the eligibility of the writ petition and the obligation of the respondent University to pay him the pension.

Before answering the question as to the entitlement of pension the jurisprudential march of the concept requires to be noticed.

The expression "Pension" has been defined in Article 366 (17) of our Constitution in the following terms:

> " Pension" means a person, whether contributory or not, of any kind whatsoever payable to or in respect of any person, and includes retired pay to payable, a gratuity so payable and any sum or sums so payable by way of the return, with or without interest thereon or any other addition thereto, of subscriptions to a provident fund."

Initially where there is no law existing regulating the grant or award of the pension, the very grant of pension was treated and considered as an act of grace on the part of the State. In STATE OF MADHYA PRADESH AND ANOTHER v. COL. LAL RAMPAL SINGH [1], the Supreme Court held as follows:

> " ….Pension is furthermore normally always a matter of grace when there is no law governing."

Subsequently, the further studies have revealed that there should be effective compliance by the State while formulating various welfare measures and schemes with the obligation arising out of Article 41 of the Constitution which has provided that:

> **"Right to work, to education and to public assistance in certain cases:-** The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of

underserved want.”

This concept of providing assistance in cases of old age, sickness and disablement is one form of providing pension. Therefore, it has come to be recognized that awarding pension is not dependent upon the sweet will or pleasure or the lack of it on the part of the State. The Supreme Court in DEOKINANDAN PRASAD v. THE STATE OF BIHAR AND OTHER [2], held as follows:

> “ 31. The question whether the pension granted to a public servant is property attracting Article 31 (1) came up for consideration before the Punjab High Court in Bhagwant Singh v. Union of India, AIR 1962 Punj 503. It was held that such a right constitutes "property" and any interference will be a breach of Article 31 (1) of the Constitution. It was further held that the State cannot by an executive order curtail or abolish altogether the right of the public servant to receive pension. This decision was given by a learned Single Judge. This decision was taken up in Letters Patent Appeal by the Union of India. The Letters Patent Bench in its decision in Union of India v. Bhagwant Singh, ILR (1965) 2 Punj 1 approved the decision of the learned Judge. The Letters Patent Bench held that the pension granted to a public servant on his retirement is "property' within the meaning of Article 31 (1) of the Constitution and he could be deprived of the same only by an authority of law and that pension does not cease to be property on the mere

> denial or cancellation of it. It was further held that the character of pension as "property" cannot possibly undergo such mutation at the whim of a particular person or authority.
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> 32. The matter again came up before a Full Bench of the Punjab and Haryana High Court in K.R. Erry v. The State of Punjab, ILR (1967) 1 Punj and Har 278 (FB). The High Court had to consider the nature of the right of an officer to get pension. The majority quoted with approval the principles laid down in the two earlier decisions of the same High Court, referred to above, and held that the pension is not to be treated as a bounty payable on the sweet-will and pleasure of the Government and the right to superannuation pension including its amount is a valuable right vesting in a Government servant. …… But we agree with the view of the majority when it has approved its earlier decision that pension is not a bounty payable on the sweet-will and pleasure of the Government and that, on the other hand, the right to pension is a valuable right vesting in a Government servant."

Pension has also come to be recognized as not an act of bounty but a valuable right. It is also treated as part of right to property itself. Thereafter, the Supreme Court had come to recognize the right to receive pension as part of overall conditions of service of public employment.

It is apt to point out right here what Supreme Court

has said in D.S. NAKARA v. UNION OF INDIA [3],

> "26. Let us therefore examine what are the goals that pension scheme seeks to subserve? A pension scheme consistent with available resources must provide that the pensioner would be able to live: (i) free from want, with decency, independence and self-respect, and (ii) at a standard equivalent at the pre-retirement level. This approach may merit the criticism that if a developing country like India cannot provide an employee while rendering service a living wage, how can one be assured of it in retirement? This can be aptly illustrated by a small illustration. A man with a broken arm asked his doctor whether he will be able to play the piano after the cast is removed. When assured that he will, the patient replied, 'that is funny, I could not before'. It appears that in determining the minimum amount required for living decently is difficult, selecting the percentage representing the proper ratio between earnings and the retirement income is harder. But it is imperative to note that as self-sufficiency declines the need for his attendance or institutional care grows. Many are literally surviving, now than the past. We owe it to them and ourselves that they live, not merely exist. That philosophy prevailing in a given society at various stages of its development profoundly influences is social objectives. These objectives are in turn a determinant of a social policy. The law is one of the chief instruments whereby the social policies are implemented and pension

is paid according to rules which can be said to provide social security law by which it is meant those legal mechanisms primarily concerned to ensure the provision for the individual of a cash income adequate, when taken along with the benefits in kind provided by other social services (such as free medical aid) to ensure for him a culturally acceptable minimum standard of living when the normal means of doing so failed'. (see Social Security Law by Prof. Harry Calvert, p. 1).

27. Viewed in the light of the present day notions pension is a term applied to periodic money payments to a person who retires at a certain age considered age of disability; payments usually continue for the rest of the natural life of the recipient. The reasons underlying the grant of pension vary from country to country and from scheme to scheme. But broadly stated they are: (i) as compensation to former members of the armed forces or their dependents for old age, disability, or death (usually from service causes), (ii) as old age retirement or disability benefits for civilian employees, and (iii) as social security payments for the aged, disabled, or deceased citizens made in accordance with the rules governing social service programmes of the country. Pensions under the first head are of great antiquity. Under the second head they have been in force in one form or another in some countries for Over a century but those coming under the third head are relatively of recent origin, though they

are of the greatest magnitude. There are other views about pensions such as charity, paternalism, deferred pay, rewards for service rendered, or as a means of promoting general welfare (see Encyclopaedia Britannica, Vol. 17, p. 575). But these views have become otiose.

28. Pensions to civil employees of the Government and the defence personnel as administered in India appear to be a compensation for service rendered in the past. However, as held in Dodge v. Board of Education, (1937) 302 US 74: 82 Law Ed 57 a pension is closely akin to wages in that it consists of payment provided by an employer, is paid in consideration of past service and serves the purpose of helping the recipient meet the expenses of living. This appears to be the nearest to our approach to pension with the added qualification that it should ordinarily ensure freedom from undeserved want.

29. Summing-up it can be said with confidence that pension is not only compensation for loyal service rendered in the past, but pension also has a broader significance, in that it is a measure of socio-economic justice which inheres economic security in the fall of life when physical and mental prowess is ebbing corresponding to ageing process and therefore, one is required to fall back on savings. One such saving in kind is when you gave your best in the he day of life to your employer, in days of invalidity, economic security by way of

> periodical payment is assured. The term has been judicially defined as a stated allowances or stipend made in consideration of past service or a surrender of rights or emoluments to one retired from service. Thus the pension payable to a Government employee is earned by rendering long and efficient service and therefore can be said to be a deferred portion of the compensation for service rendered. In one sentence one can say that the most practical raison d'etre for pension is the inability to provide for oneself due to old age. One may live and avoid unemployment but not senility and penury if there is nothing to fall back upon.
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> 30. The discernible, purpose thus underlying pension scheme or a statute introducing the pension scheme must inform interpretative process and accordingly it should receive a liberal construction and the Courts may not so interpret such statute as to render them inane (see American Jurisprudence 2d. 881)."

And in ALL INDIA RBI OFFICERS' ASSOCIATION v. UNION OF INDIA [4], it is held as follows:

> "5. The concept of pension is now well known and has been clarified by this Court time and again. It is not a charity or bounty nor is it gratuitous payment solely dependent on the whim or sweet will of the employer. It is earned for rendering long service and is often described as deferred portion of compensation for past service. It is in

> fact in the nature of a social security plan to provide for the December of life of a superannuated employee. Such social security plans are consistent with the socio-economic requirements of the Constitution when the employer is a State within the meaning of Article 12 of the Constitution."

It has now come to be recognized that grant of pension is nothing but an act of deferred payment for the long years of services rendered by the individual. It also important that persons who render quality services during their prime of youth or when all their physical prowess are under their command and thus contribute to the overall development of the society, need to be relieved of conditions of near penury when they become old.. Therefore, during the period they render services to the State when everything was well and good, they also simultaneously earn the right to receive pension when the faculties of physical prowess keep receding with the advancement in age and the State's obligation to ensure that the citizens are not forced by the economic necessity to enter avocations unsuited to their age or strength (as incorporated in Clause "e" of Article 39) has got to be given a meaning and an appropriate dimension.

Fortunately, the expression "State" occurring in Part IV of our Constitution carries the same meaning as in Part III of the Constitution. Article 12 while dealing and defining the expression "State" has also taken in its

sweep the local or other authorities within the territory of India. It can hardly be of any doubt that the Jawaharlal Nehru Technological University which has been established in accordance with Section 3 of the Jawaharlal Nehru Technological University Act 1972, answers the definition of the expression “State”.

Section 21 of Act 16 of 72 has thrust a compulsory obligation on the university to constitute for the benefit of its employees in such manner and subject to such conditions as may be prescribed by the statutes such pension, insurance, gratuity or provident fund as it may deem fit. Thus, the respondent University is under a clear obligation to redeem the deferred payment in recognition of the well-merited services rendered in the past by every employee. The regulations or rules framed by university perhaps may confine in their application to the regular employees who have put in the requisite qualifying service. But nonetheless, persons who had been discharging the most essential functions for which the university had been created namely the academic and research work, cannot be ignored and be denied or deprived of their right to receive proportionate pension. The entire length of teaching and research work undertaken by such accomplished academics, like in the instant case, are liable to be paid for their contribution of service rendered to the university’s growth. When once the concept of pension is to be recognized as a mere act

of payment for the past services, as it is a deferred payment, it follows that what such teachers like the writ petitioner herein, were paid during the time they were serving is not the whole and complete amount or payment for their services. Portion of the payment due to such teachers has to be construed to have been deferred and it is that deferred component of their wages, which is now liable to be redeemed by way of payment of pension, notwithstanding that the Pension Schemes or Regulations framed by the Respondent University did not cover the cases of teachers like the petitioner.

Therefore, we hold that the writ petitioner is entitled to be paid pension for the services rendered by him to the respondent University eversince his initial engagement upto the end of April 2007. It is for the University to devise an appropriate measure to compute the pension to be paid in the case of the petitioner as his case may not be falling within the regulations stipulated by the University for payment of pension. University is bound to ensure that he will, at least, get the minimum amount of pension, which a teacher of corresponding length of service rendered to the University, gets paid. The decision in this regard be taken on or before 31-07-2007. The obligation to pay pension commences from the 01-05-2007. It will still be open to the University to continue to engage the services of the writ petitioner as a teacher, provided the University could not find a suitable substitute. This decision to continue the petitioner in

service will depend upon the essential fact that on the course curriculum and content of the students and their training should not get disrupted for want of a suitable teacher. The remuneration that is liable to be paid is independent with the quantum of pension that is to be paid as ordered supra.

To this extent we allow writ appeal. No costs.

J.Chelameswar, J

P.Swaroop Reddy, J

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26th April 2007

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[1] AIR 1966 SC 820

[2] AIR 1971 SC 1409

[3] AIR 1983 SC 130

[4] AIR 1992 SC 767